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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

RONALD CAMPBELL,

Defendant and Appellant.

B259400

(Los Angeles County
Super. Ct. No. LA074366)

APPEAL from an order of the Superior Court of Los Angeles County, Joseph Brandolino, Judge. Affirmed.

Theresa Osterman Stevenson, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, James William Bilderback II, and Dana M. Ali, Deputy Attorneys General, for Plaintiff and Respondent.

Ronald Campbell was convicted of two counts of armed robbery (Pen. Code, §§ 211, 12022, subd. (b)(1)).¹ On appeal, he contends his conviction must be reversed because the trial court erroneously admitted evidence of an uncharged offense in violation of his constitutional right to due process, and erroneously imposed an out-on-bail enhancement under section 12022.1. We affirm.

BACKGROUND

On June 12, 2013, around 9:20 p.m., Praveen Kandukuri and his mother were sitting on the steps of an apartment building on Woodley Avenue in Los Angeles when appellant and his girlfriend, Ahmunique Brown, approached them. Appellant demanded Kandukuri's cell phone, Kandukuri handed the phone to appellant, and appellant put it in his pocket. Appellant then produced a gun, pointed it at Kandukuri, and gestured towards Kandukuri's gold chain and ring. At the same time, Brown attempted to grab Kandukuri's mother's ring and bangle bracelet. When Kandukuri said the gun was fake, appellant shot once into the ground about a foot away from Kandukuri. Kandukuri's mother threw her bracelet on the ground, appellant picked it up, and he and Brown ran away.

About 10 minutes after the first incident, Hector Calderon was walking on Valjean Street towards Vanowen Street, three blocks away from where Kandukuri had been robbed, when appellant and Brown approached him. Appellant pointed a gun at him and demanded his phone and wallet. Calderon produced his phone and wallet, Brown grabbed them from his hands, and she and appellant walked away. Calderon saw appellant and Brown walk into an alley, he followed them at a distance, stopped two men in a nearby car, Mike Cazares and Paul Tapia, told them he had been robbed, asked for their help, and indicated that appellant and Brown, who were in the alley about 500 feet away, were the perpetrators. Cazares and Tapia got out of the car and walked towards appellant. As they were walking, Tapia saw appellant toss Calderon's wallet next to a trash can and stopped to pick it up. Cazares continued walking towards appellant and

¹ All statutory references are to the Penal Code unless otherwise noted.

Brown, confronted appellant, and asked if he robbed Calderon. Appellant denied robbing Calderon, but said “the wallet is over there by the trash can.” Then appellant and Brown ran away, and Tapia called 911.

The Los Angeles Police Department responded to the scene and took reports from Calderon, Tapia and Cazares. The officers were canvassing the area when they saw appellant run onto a departing Los Angeles County Metro Transit Authority (MTA) Orange Line Route 9299 bus, so they followed the bus, stopped it, ordered all passengers off and detained the passengers while they searched the bus and all passengers’ belongings. The officers found a large purse on the bus containing a loaded gun from which one bullet had been fired, United States currency, papers with the name Ahmunique Brown on them, and three cell phones. Officers later obtained video surveillance footage from the bus which showed Brown board the bus with appellant, carrying the purse.

Later that evening Cazares identified appellant in person at the location where the bus was stopped. Even though appellant was wearing different clothing than earlier, Cazares recognized a chain appellant had been wearing when he confronted him in the alley. Kandukuri identified appellant in a photographic lineup.

The eyewitnesses reported the robber had been wearing a black T-shirt and dark jeans, but when apprehended appellant was wearing a white T-shirt and pajama pants. Residents of a nearby apartment building reported to police that they had seen an African-American male change and discard clothes in the apartment complex’s yard around 9:30 p.m.

Appellant was tried by a jury.

In pre-trial proceedings, appellant moved to exclude evidence of a prior robbery, arguing it was inadmissible under Evidence Code sections 1101, subdivision (a), and 352. Appellant’s juvenile petition for a robbery committed with Brown on March 29, 2012, had been sustained and was later dismissed. In this uncharged robbery, appellant and Brown followed the victim from a bus stop, they traded jackets, appellant pointed a BB gun at the victim and demanded his wallet and cell phone, appellant and Brown took the

items and were later apprehended at an MTA Orange Line station. Police found the BB gun in a backpack appellant had abandoned at the station. The trial court found evidence of the uncharged offense was admissible under Evidence Code section 1101 because the similarities between the charged offense and the uncharged offense were sufficient to make the uncharged offense relevant to prove appellant's intent and common plan or scheme. It stated the relevant similarities were: defendant pointed a gun at the victim, demanded phone or property and took such property; defendant committed the robberies with the same person, Brown; and he changed clothes, and fled to an MTA Orange Line bus stop. The court excluded evidence of the uncharged offense for the purpose of proving identity. It weighed the evidence under Evidence Code section 352 and found it was highly relevant to prove intent and common plan because the prior offense occurred only 15 months before the current charge, and the juvenile petition was sustained for the prior offense. It found the probative value of the evidence was not outweighed by a risk of undue prejudice because the prior crime was no more inflammatory and no more egregious than the current allegations. The trial court therefore denied the motion to exclude. During the trial, before the uncharged offense evidence was introduced, the trial court instructed the jury that the evidence was to be considered only for the purposes of proving appellant's intent and whether he had a plan or scheme to commit the charged offenses.

Kandukuri, Cazares, Tapia and Calderon testified against appellant at trial. Appellant denied any involvement in the charged robberies. A witness testified to having seen a person resembling appellant change clothes in the alley on the evening of the crime.

The jury found appellant guilty of two counts of second degree robbery committed with a firearm. (§§ 211, 12022, subd. (b)(1).) The trial court sentenced him to 31 years and four months in state prison. At the sentencing hearing, the People argued that an out-on-bail enhancement under section 12022.1 should be applied to appellant's sentence because he had been released from custody on his own recognizance for the March 29, 2012 robbery, when he was arrested for the robberies in this case. The court found that

appellant had been released from custody on his own recognizance when he committed the robberies in this case, and also found the prior case had been dismissed. The court therefore imposed and stayed the out-on-bail sentence enhancement.

Appellant timely appealed.

DISCUSSION

I. The Trial Court Acted Within Its Discretion In Admitting Evidence Of The Uncharged Offense

Appellant contends the trial court erred in admitting evidence of the uncharged offense under Evidence Code section 352 because it had minimum probative value and was unduly prejudicial. We disagree.

Under Evidence Code section 1101, evidence of other offenses or misconduct is inadmissible to prove criminal propensity, but may be admitted if relevant to prove a material fact such as intent or plan. (Evid. Code, § 1101 subds. (a) & (b); *People v. Kelly* (2007) 42 Cal.4th 763, 783.) Evidence of an uncharged offense is relevant to prove common design or plan where similarities between the uncharged offense and the charged offense support an inference that the defendant employed the same plan used for the prior offense when he committed the charged offense. (*People v. Ewoldt* (1994) 7 Cal.4th 380, 403.) To be relevant for intent, the uncharged offense “must be sufficiently similar to support the inference that the defendant “probably harbored the same intent in each instance.” [Citations.]” (*Id.* at p. 402.) Because evidence of uncharged offenses is highly prejudicial, it must have substantial probative value, and the trial court must carefully analyze it under Evidence Code section 352 to determine if its probative value outweighs its inherent prejudicial effects. (*People v. Ewoldt, supra*, 7 Cal.4th at p. 404.)

Under Evidence Code section 352, the trial court “in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury.”

We review the trial court’s decision to admit evidence for abuse of discretion. (*People v. Davis* (2009) 46 Cal.4th 539, 602.) “[T]he trial court enjoys broad discretion

in assessing whether the probative value of particular evidence is outweighed by concerns of undue prejudice, confusion or consumption of time. [Citation.] . . . [I]ts exercise of that discretion ‘must not be disturbed on appeal *except* on a showing that the court exercised its discretion in an arbitrary, capricious or patently absurd manner that resulted in a manifest miscarriage of justice. [Citations.]’” (*People v. Rodrigues* (1994) 8 Cal.4th 1060, 1124.)

Here, the trial court admitted the uncharged offense evidence for the purpose of proving appellant’s plan and intent to commit the charged crimes. Appellant committed the uncharged offense with the same person, Brown, only 15 months prior to the charged offense. Similar to the charged robbery, he changed clothes, followed the victim from a bus stop, pointed a BB gun at him, demanded his wallet and cell phone, took the items, fled the scene, abandoned the bag that held the gun, and was apprehended at an MTA Orange Line station. The similarities between the uncharged offense and the charged offense support an inference that appellant employed the same plan used for the prior offense when he committed the charged offense. (*People v. Ewoldt, supra*, 7 Cal.4th at p. 403.) The similarities were also sufficient to support an inference that appellant harbored the same intent in each instance. (*Id.* at p. 402.) Therefore, the uncharged offense evidence was admissible evidence under Evidence Code section 1101, subdivision (b).

In weighing the probative value of evidence of the uncharged offense against the danger of undue prejudice or confusion of the issues, the trial court considered the relevance of the evidence, the remoteness of the prior offense, whether the juvenile petition for the prior offense was sustained, and whether the prior crime was more inflammatory or egregious than the current charge. The trial court found the evidence had substantial probative value because it was relevant to prove intent and plan, was reliable because the petition had been sustained, and was recent, the uncharged offense having occurred only 15 months earlier. Though the uncharged offense evidence carried a risk of juror confusion and unfair prejudice the trial court properly found the probative value of appellant’s uncharged offense in establishing intent and plan outweighed its

unduly prejudicial effect. Accordingly, the trial court committed no error in admitting the evidence.

Appellant contends evidence of the uncharged offense lacked probative value because it was not relevant to prove a disputed fact because he disputed only identity at trial. We disagree. In pleading not guilty a defendant puts all elements of the crime at issue. (*People v. Balcom* (1994) 7 Cal.4th 414, 422-423.) “[T]he prosecution’s burden to prove every element of the crime is not relieved by a defendant’s tactical decision not to contest an essential element of the offense.” (*Estelle v. McGuire* (1991) 502 U.S. 62, 69.) Even if the defendant disputes only identity and not intent, the prosecution must prove intent beyond a reasonable doubt. (*People v. Soper* (2009) 45 Cal.4th 759, 777.) Here, appellant pled not guilty to robbery, a specific intent crime (§ 211), and signed no concession limiting the issues at trial therefore the People had the burden of proving all elements of the robbery, including intent. Even though appellant focused his defense on the identity dispute, the People bore the burden of proving his intent beyond a reasonable doubt, and the uncharged offense was relevant for this purpose. (*Ibid.*) The court properly found that the uncharged offense had substantial probative value.

Appellant contends evidence of the uncharged offense was unduly prejudicial because it was cumulative of other prosecution evidence regarding intent, and therefore the jury must have considered the uncharged offense for the impermissible purpose of proving appellant’s identity as the robber. Appellant argues the court’s instructions to the jury not to consider the evidence for any other purpose except for the limited purpose of proving intent and plan was ineffective because the trial court failed specifically to prohibit the jurors from using the evidence for identity purposes. We disagree. The unduly prejudicial impact of the evidence arises from its tendency to persuade jurors to infer appellant had a propensity to commit crime. But the risk of undue prejudice was reduced by the trial court’s instruction to consider the evidence only for the limited purpose of determining whether appellant’s past actions showed his intent or plan to commit the charged crimes, and admonished it not to consider it for any other purpose. The court specifically admonished the jury not to infer from the evidence that appellant

was disposed to commit crime. The trial court's instruction was clear, direct and unqualified, and as such it sufficed. (*Adkins v. Brett* (1920) 184 Cal. 252, 260.) We presume the jury understood and followed the instructions as stated, and that the instruction effectively minimized any prejudicial effect. (*People v. Panah* (2005) 35 Cal.4th 395, 492.)

In any event, any error was nonprejudicial. Here, both victims testified against appellant at trial and provided evidence of his intent to deprive them of their property by force, in this case, by holding them at gunpoint. In addition, Tapia testified he saw appellant dispose of Calderon's wallet. One victim, Kandukuri, identified appellant in a photographic lineup and in court. And Cazares identified appellant in person on the night of the crime and in court. Although appellant was wearing different clothes than the victims described him wearing at the time of the robbery, residents of a nearby apartment building testified they saw him change and discard clothes after the crimes. Cazares also recognized appellant was wearing both when he confronted him in the alley and when he identified him in person later that evening. Finally, the MTA bus surveillance video showed appellant boarding the bus with Brown and the bag that contained the gun. Because evidence of the uncharged offense was cumulative to extensive eyewitness testimony at trial that proved intent and identity, we conclude no reasonable probability exists that a result more favorable to appellant would have been reached but for admission of evidence of the uncharged offense. (*People v. Watson* (1956) 46 Cal.2d 818, 836.)

II. Appellant's Due Process Claim

Appellant contends the court's erroneous admission of the uncharged offense as pure character evidence violated his federal constitutional right to due process. (U.S. Const., 5th Amend.) Because we find the trial court properly admitted the uncharged offense as evidence of intent and plan under Evidence Code section 1101, subdivision (b), we also find no violation of appellant's due process rights occurred. (Cf. *People v. Partida* (2005) 37 Cal.4th 428, 437 ["Once the reviewing court has found error in overruling the trial objection, whether that error violated due process is a question of law

for the reviewing court, not the trial court in ruling on the objection, to determine in assessing the consequence of that error”].)

III. The Trial Court Properly Stayed The Out-On-Bail Enhancement

Appellant contends the trial court erred in imposing and staying a sentence enhancement under section 12022.1 because his prior offense was dismissed before sentencing in this case. We disagree.

Section 12022.1, subdivision (b) provides, “Any person arrested for a secondary offense that was alleged to have been committed while that person was released from custody on a primary offense shall be subject to a penalty enhancement of an additional two years, which shall be served consecutive to any other term imposed by the court.” “‘Primary offense’ means a felony offense for which a person has been released from custody on bail or on his or her own recognizance prior to the judgment becoming final . . .” (§ 12022.1, subd. (a).) “‘Secondary offense’ means a felony offense alleged to have been committed while the person is released from custody for a primary offense.” (*Ibid.*)

Subdivision (d) of section 12022.1 provides, “Whenever there is a conviction for the secondary offense and the enhancement is proved, and the person is sentenced on the secondary offense prior to the conviction of the primary offense, the imposition of the enhancement shall be stayed pending imposition of the sentence for the primary offense. The stay shall be lifted by the court hearing the primary offense at the time of sentencing for that offense and shall be recorded in the abstract of judgment. If the person is acquitted of the primary offense the stay shall be permanent.”

Here, appellant committed a robbery on March 29, 2012, and was released from custody on his own recognizance when he committed the charged robberies on June 12, 2013. Appellant’s primary offense was dismissed on December 2, 2013, before his sentencing in this case on September 10, 2014. Therefore, the trial court properly imposed the enhancement pursuant to section 12022.1, subdivision (b) and also properly stayed the enhancement pursuant to section 12022.1, subdivision (d).

DISPOSITION

The judgment is affirmed.
NOT TO BE PUBLISHED.

CHANEY, Acting P. J.

We concur.

JOHNSON, J.

LUI, J.